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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,179	01/12/2004	Sandra Parkington	47973.2.1	2086
22859 7590 12/28/2009 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET, SUITE 4000 MINNEAPOLIS, MN 55402				
			EXAMINER RAJAN, KAI	
			ART UNIT 3769	PAPER NUMBER
			MAIL DATE 12/28/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/756,179

Applicant(s)

PARKINGTON, SANDRA

Examiner

Kai Rajan

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2009 has been entered. Furthermore, the application has been transferred to Examiner Kai Rajan for further prosecution.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 4 and 7 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller – Kovach et al. U.S. Patent No. 6,436,036 B1.

Regarding claim 1, Miller – Kovach et al. disclose a method for tracking sodium intake comprising the steps of:

a. determining an amount by weight, of a standard measurement system, of dietary sodium a subject is allowed to consume during an intake period, the amount being specific to a particular subject (Column 3 lines 1 – 12 determining maximum point allotments based on body weight, where points are directly correlated to nutrients);

b. converting the amount by weight of dietary sodium so determined into intake points by use of a preset ratio of the amount by weight of the standard measurement system to intake points, the conversion being performed by a processor and the preset ratio being programmable into the processor, the preset ratio resulting in a total number of the intake points the subject is allowed to consume during an intake period that is one or two digits long (See figure 8a, where a slide rule is shown that correlates weights and amounts of nutrients to point values, with a constant ratio of points to nutrients);

c. selectively displaying on a display a conversion scale listing the relationship between multiple intake point values and the corresponding amounts by weight of dietary sodium, the multiple relationships being displayed simultaneously and being based on the preset ratio, the display operatively connected to the processor (See figure 8a, where a slide rule is shown that correlates weights and amounts of nutrients to point values, with a constant ratio of points to nutrients, column 7 lines 3 – 6 the same conversion may be performed by a computer, column 8 lines 49 – 50);

d. determining the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed by the subject (Column 3 lines 64 – 67, column 4 lines 1 – 16 using the slide rule to determine the point value for food consumed);

e. selectively entering into the processor the number of intake points associated with the portion of food that will be consumed or the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed, such entry into the processor of the number of intake points or the amount by weight of dietary sodium being user-selectable (Column 9 lines 5 – 20 identifying the number of points for particular foods, column 9 lines 21 – 67, column 10 lines 1 – 31 storing point values for consumed food);

f. converting the amount by weight of the standard measurement system of dietary sodium in the portion of food to be consumed to intake points by use of said preset ratio (Column 9 lines 5 – 20 identifying the number of points for particular foods, column 9 lines 21 – 67, column 10 lines 1 – 31 storing point values for consumed food);

g. maintaining a running sum of intake points which are equivalent to dietary sodium consumed by the subject during the intake period (Column 10 lines 32 – 35 total points accumulated stored); and

h. displaying as an output the running sum of intake points on the display (Column 10 lines 16 – 19 displaying accumulated points).

Miller-Kovach et al. disclose a system for monitoring diet by correlating point values to amounts of fat, fiber, and calories consumed. Miller-Kovach et al. fail to disclose accounting for sodium consumed. However, it would have been obvious to one of ordinary skill in the art of diet monitoring at the time the invention was made to modify the invention of Miller-Kovach to account for sodium as well, since Miller-Kovach states that other dietary factors may include, but are not limited to, sugar content, and it is well known that, like sugar, sodium is a commonly monitored and regulated nutrient for weight loss.

2. The method of claim 1 including the further step of repeating steps a. to h. for successive intake periods (Column 7 lines 40 – 57 points calculated and target point values for each day).

3. The method of claim 2 includes the step of making each intake period a day (Column 7 lines 40 – 57 points calculated and target point values for each day).

4. The method of claim 1 including the further steps of:

i. recording the weight of the subject at the beginning of each intake period (Column 3 lines 4 – 11 points are calculated based on weight, which is evaluated each day); and

j. recording the weight of the subject at least once per day (Column 3 lines 4 – 11 points are calculated based on weight, which is evaluated each day).

7. The method of claim 1 wherein the standard measurement system used is selected from the group of the English system or the Metric system (See figure 8a nutrients expressed in grams which is Metric).

8. The method of claim 1 wherein the standard measurement system is the Metric system (See figure 8a nutrients expressed in grams which is Metric).

In regards to claim 9, Miller-Kovach et al. disclose a set ratio between monitored nutrients and point values, as quantified by the algorithms in columns 3 and 4. Miller-Kovach et al. fail to disclose a set ratio of 100 milligrams of nutrient per point, however it would have been

obvious to one of ordinary skill in the art at the time the invention was made to use a numerically different ratio between nutrients, and the size of the ratio itself is a design choice. Furthermore, there is nothing of record to distinguish the ratio of 100 milligrams of nutrients per point as a non-obvious variant of other possible ratios.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller – Kovach et al. U.S. Patent No. 6,436,036 B1 as applied to claim 1 above, further in view of Cosentino et al. U.S. PGPub No. 2006/0064030 A1.

In regards to claims 6 and 7, Miller-Kovach et al. disclose monitoring the weight loss of an individual, yet fail to teach consulting a specialist when the rate of weight loss is too high. However, Cosentino et al. a reference in an analogous art of physiological health monitoring teach the consideration of different lifestyle and physiological factors of an individual, and based on those factors referring the individual to a health care professional. The art teaches that follow-ups with a medical professional may be necessary depending on the success or failure of weight loss / management routines (Cosentino et al. paragraph 0181). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Miller-Kovach et al. to provide an indication or advisory notice to an individual to seek medical attention under certain conditions, Cosentino et al. teach the well known fact that certain symptoms and conditions that may be hazardous to an individual's health require special medical attention (Cosentino et al. paragraph 0181).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit
3769

December 18, 2009